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GENERAL DIVISION

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11           **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
12           **IN AND FOR THE COUNTY OF SAN DIEGO**

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15           SHUKRI SAKKAB, an individual, on  
16           behalf of himself, and on behalf of all  
16           persons similarly situated,

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Plaintiff,

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vs.

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20           LUXOTTICA RETAIL NORTH  
20           AMERICA INC., an Ohio Corporation;  
21           and DOES 1 through 50 inclusive,

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Defendants.

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Case No. 37-2012-00000743-CU-OE-CTL

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN  
VIOLATION OF CAL. BUS. & PROF.  
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY OVERTIME  
COMPENSATION IN VIOLATION OF  
CAL. LAB. CODE §§ 510, 1194 AND  
1198, *et seq.*;
3. FAILURE TO PROVIDE ACCURATE  
ITEMIZED STATEMENTS IN  
VIOLATION OF CAL. LAB. CODE §  
226; and,
4. FAILURE TO PROVIDE WAGES  
WHEN DUE IN VIOLATION OF CAL.  
LAB. CODE § 203.

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Shukri Sakkab ("PLAINTIFF"), on behalf of himself and all other similarly  
2 situated current and former employees, alleges on information and belief, except for his own  
3 acts and knowledge, the following:

4

5 **THE PARTIES**

6 1. Defendant Luxottica Retail North America Inc. ("LUXOTTICA" or  
7 "DEFENDANT") is an Ohio Corporation with its principal place of business located in  
8 Mason, Ohio. At all relevant times mentioned herein, LUXOTTICA conducted and  
9 continues to conduct substantial and regular business throughout California. LUXOTTICA  
10 conducts business under the business name Lenscrafters.

11 2. Established in 1983, LUXOTTICA was one of the first optical retailers to  
12 promise "eyeglasses in about an hour." Now, LUXOTTICA is one of North America's  
13 largest seller of eyewear and related services with over 950 stores in the U.S. and Canada.  
14 The company-owned stores, called Lenscrafters, sell prescription frames and sunglasses,  
15 contact lenses, and vision exams by on-site optometrists. LUXOTTICA is a nationwide  
16 optical chain with approximately 100 stores in California.

17 3. To successfully compete against the other optical retailers, LUXOTTICA  
18 substantially reduced labor costs by placing the burden of work on a smaller number of  
19 employees that were classified by LUXOTTICA as exempt from overtime wages. The goal  
20 of overtime laws includes expanding employment throughout the workforce by putting  
21 financial pressure on the employer and nurturing a stout job market, as well as the important  
22 public policy goal of protecting employees in a relatively weak bargaining position against  
23 the unfair scheme of uncompensated overtime work. An employer's obligation to pay its  
24 employees wages is more than a matter of private concern between the parties. That  
25 obligation is founded on a compelling public policy judgment that employees are entitled to  
26 work a livable number of hours at a livable wage. In addition, statutes and regulations that  
27 compel employers to pay overtime relate to fundamental issues of social welfare worthy of  
28 protection. The requirement to pay overtime wages extends beyond the benefits individual

1 workers receive because overtime wages discourage employers from concentrating work in a  
2 few overburdened hands and encourage employers to instead hire additional employees.  
3 Especially in today's economic climate, the importance of spreading available work to  
4 reduce unemployment cannot be overestimated.

5 4. Plaintiff Shukri Sakkab resides in the County of San Diego and was employed  
6 by LUXOTTICA as a General Manager at their Lenscrafters retail store at the Westfield  
7 UTC Mall in San Diego, California and classified as exempt from overtime wages from  
8 April of 2010 to November of 2011.

9 5. As part of their Lenscrafters retail business, LUXOTTICA employs a fleet of  
10 so called "General Managers." The General Managers finite set of tasks was to greet  
11 customers, handle customer requests and customer service complaints, conduct optical sales  
12 in accordance with LUXOTTICA's company policies, take inventory, receive customers'  
13 money in payment for their receipt of products or services provided by LUXOTTICA, and  
14 act as information liaisons between LUXOTTICA's district managers and other employees  
15 in their store. In performing these tasks PLAINTIFF and other General Managers were also  
16 engaged in the related clerical paperwork tasks and reviewing daily, weekly, and monthly  
17 sales goals.

18 6. The position of General Manager was represented by LUXOTTICA to the  
19 PLAINTIFF and the other General Managers as a salaried position exempt from overtime  
20 wages and other related benefits.

21 7. To perform their finite set of tasks, the General Managers did not engage in a  
22 supervisory role given the constraints placed upon them by company policy. General  
23 Managers did not determine what work was to be done by other employees or in what time  
24 frame. Instead, the General Managers only retained a minor role in readjusting work  
25 assignments in accordance with LUXOTTICA's strict, uniform corporate guidelines.  
26 Furthermore, General Managers also had no role in training other employees or determining  
27 what training they were to receive. Employees received their training through a CD-ROM  
28 given to them by LUXOTTICA. The General Managers did not have the authority to hire,

1 fire, or promote other employees. General Managers could only do so upon receiving  
 2 approval from corporate employees and the human resources department of LUXOTTICA.  
 3 General Managers also did not have the authority to determine other employees' pay rates or  
 4 benefits, or give raises as they were unable to make employment-related, personnel decisions  
 5 without obtaining approval from the human resources department of LUXOTTICA.  
 6 Disciplinary decisions were made by the human resources department or dictated by  
 7 company policies. As a result, the General Managers were engaged in a type of work that  
 8 required no exercise of independent judgment or discretion as to any matter of significance.  
 9 Therefore, the PLAINTIFF and all the other General Managers were "managers" in name  
 10 only because they did not have managerial duties or authority and should therefore have  
 11 been properly classified as non-exempt employees.

12       8. Plaintiff Shukri Sakkab brings this Class Action on behalf of himself and a  
 13 California class, defined as all persons who are or previously were employed by Defendant  
 14 Luxottica Retail North America Inc. in California as a General Manager for a Lenscrafters  
 15 retail store and were classified as exempt from overtime wages (the "CALIFORNIA  
 16 CLASS") during the period beginning on the date four (4) years prior to the filing of this  
 17 Complaint and ending on the date as determined by the Court (the "CALIFORNIA CLASS  
 18 PERIOD").

19       9. As defined by LUXOTTICA's comprehensive corporate policies and  
 20 procedures, the tasks that the PLAINTIFF and other CALIFORNIA CLASS Members  
 21 performed were the non-managerial tasks of greeting customers, handling customer requests  
 22 and customer service complaints, conducting optical sales in accordance with  
 23 LUXOTTICA's company policies, taking inventory, receiving customers' money in payment  
 24 for their receipt of products or services provided by LUXOTTICA, and acting as  
 25 information liaisons between LUXOTTICA's district managers and other employees in their  
 26 store in accordance with LUXOTTICA's established specific procedures and protocols  
 27 which governed and controlled every aspect of the work performed by the PLAINTIFF and  
 28 other CALIFORNIA CLASS Members. In performing these tasks PLAINTIFF and other

1 CALIFORNIA CLASS Members were also engaged in the related clerical paperwork tasks  
2 and reviewing daily, weekly, and monthly sales goals. These standardized procedures mirror  
3 the realities of the workplace evidencing a uniformity of work among the PLAINTIFF and  
4 other CALIFORNIA CLASS Members and negated any exercise of independent judgment  
5 and discretion as to any matter of significance.

6 10. The work schedule for the PLAINTIFF and other CALIFORNIA CLASS  
7 Members was set by LUXOTTICA. Generally, the PLAINTIFF and other CALIFORNIA  
8 CLASS Members worked ten (10) to twelve (12) hours each workday and ten (10) to twenty  
9 (20) hours of overtime each workweek.

10 11. LUXOTTICA did not establish an alternative workweek election for  
12 PLAINTIFF and other CALIFORNIA CLASS Members for ten (10) to twelve (12) hour  
13 workdays.

14 12. PLAINTIFF and the other CALIFORNIA CLASS Members were not  
15 provided with overtime compensation, were also not afforded their meal and/or rest breaks  
16 and other benefits required by law as a result of being classified as "exempt" by  
17 LUXOTTICA.

18 13. As a matter of company policy, practice, and procedure, LUXOTTICA has  
19 uniformly, unlawfully, unfairly and/or deceptively classified every General Manager as  
20 exempt based on job title alone, failed to pay the required overtime compensation and  
21 otherwise failed to comply with all applicable labor laws with respect to these General  
Managers.

22 14. The true names and capacities, whether individual, corporate, subsidiary,  
23 partnership, associate or otherwise of Defendants DOES 1 through 50, inclusive, are  
24 presently unknown to the PLAINTIFF who therefore sues these Defendants by such  
25 fictitious names pursuant to Cal. Civ. Proc. Code § 474. The PLAINTIFF will seek leave to  
26 amend this Complaint to allege the true names and capacities of DOES 1 through 50,  
27 inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon  
28 that information and belief alleges, that the Defendants named in this Complaint, including

1 DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events  
2 and happenings that proximately caused the injuries and damages hereinafter alleged.

3       15. The agents, servants and/or employees of the Defendants and each of them  
4 acting on behalf of the Defendants acted within the course and scope of his, her or its  
5 authority as the agent, servant and/or employee of the Defendants, and personally  
6 participated in the conduct alleged herein on behalf of the Defendants with respect to the  
7 conduct alleged herein. Consequently, the acts of each Defendants are legally attributable to  
8 the other Defendants and all Defendants are jointly and severally liable to the PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS, for the loss sustained as a proximate  
10 result of the conduct of the Defendants' agents, servants and/or employees.

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#### THE CONDUCT

13       16. The finite set of tasks required of the General Managers as defined by  
14 DEFENDANT were executed by the General Managers through the performance of non-  
15 exempt labor within a defined clerical skill set.

16       17. Although the PLAINTIFF and the other General Managers performed non-  
17 exempt tasks, DEFENDANT instituted a blanket classification policy, practice and  
18 procedure by which all of these General Managers were classified as exempt from overtime  
19 compensation and related benefits. By reason of this uniform exemption practice, policy and  
20 procedure applicable to the PLAINTIFF and the other General Managers who performed  
21 these non-exempt tasks, DEFENDANT committed acts of unfair competition in violation of  
22 the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
23 "UCL"), by engaging in a company-wide policy, practice and procedure which failed to  
24 properly classify the PLAINTIFF and the other General Managers and thereby failed to pay  
25 them overtime wages for documented overtime hours worked. The proper classification of  
26 these employees is DEFENDANT's burden. As a result of DEFENDANT's intentional  
27 disregard of the obligation to meet this burden, DEFENDANT failed to pay all required  
28 overtime compensation for work performed by the members of the CALIFORNIA CLASS

1 and violated the California Labor Code and regulations promulgated thereunder as herein  
2 alleged. In addition, DEFENDANT failed to provide all of the legally required meal and  
3 rest breaks to the PLAINTIFF and the other CALIFORNIA CLASS Members as required by  
4 the applicable Wage Order and Labor Code. During the CALIFORNIA CLASS PERIOD,  
5 DEFENDANT did not have a policy or practice which provided meal and rest breaks to the  
6 PLAINTIFF and the other CALIFORNIA CLASS Members. As a result, DEFENDANT's  
7 failure to provide the PLAINTIFF and the CALIFORNIA CLASS with all legally required  
8 meal and rest breaks is evidenced by DEFENDANT's business records which contain no  
9 record of these breaks.

10       18. DEFENDANT, as a matter of law, has the burden of proving that (a)  
11 employees are properly classified as exempt and that (b) DEFENDANT otherwise complies  
12 with applicable laws.

13       19. During their employment with DEFENDANT, the PLAINTIFF and the other  
14 CALIFORNIA CLASS Members, performed non-managerial, non-exempt tasks, but were  
15 nevertheless classified by DEFENDANT as exempt from overtime pay and worked more  
16 than eight (8) hours in a workday, forty (40) hours in a workweek, and/or on the seventh  
17 (7th) consecutive day of a workweek.

18       20. PLAINTIFF and the other General Managers employed by DEFENDANT  
19 were not engaged in work of a type that was or now is directly related to the management or  
20 general business operations of the employer's customers, when giving these words a fair but  
21 narrow construction. PLAINTIFF and the other General Managers employed by  
22 DEFENDANT were also not engaged in work of a type that was or now is performed at the  
23 level of the policy or management of DEFENDANT. PLAINTIFF and the other General  
24 Managers employed by DEFENDANT were also not engaged in work requiring knowledge  
25 of an advanced type in a field or science or learning customarily acquired by a prolonged  
26 course of specialized intellectual instruction and study, but rather their work involved the  
27 performance of routine mental, clerical, and/or physical processes. PLAINTIFF and the  
28 other General Managers employed by DEFENDANT were also not engaged in work that

1 was intellectual and varied in character, but rather was routine mental, clerical, and/or  
2 physical work that was of such character that the output produced or the result accomplished  
3 can be standardized in relation to a given period of time. The work of a General Manager of  
4 DEFENDANT was work wherein the PLAINTIFF and the members of the CALIFORNIA  
5 CLASS were engaged in the day-to-day business of DEFENDANT. The General Managers  
6 performed the finite set of tasks of greeting customers, handling customer requests and  
7 customer service complaints, conducting optical sales in accordance with DEFENDANT's  
8 company policies, taking inventory, receiving customers' money in payment for their receipt  
9 of products or services provided by DEFENDANT, and acting as information liaisons  
10 between DEFENDANT's district managers and other employees in their store in accordance  
11 with DEFENDANT's established specific procedures and protocols which governed and  
12 controlled every aspect of the work performed by the PLAINTIFF and other CALIFORNIA  
13 CLASS Members . In performing these tasks PLAINTIFF and other CALIFORNIA CLASS  
14 Members were also engaged in the related clerical paperwork tasks and reviewing daily,  
15 weekly, and monthly sales goals.

16       21. In performing these tasks, PLAINTIFF and other CALIFORNIA CLASS  
17 Members followed procedures established by DEFENDANT. Specifically, DEFENDANT  
18 set daily, weekly, and monthly sales goals that the PLAINTIFF and other General Managers  
19 would follow when performing their finite set of tasks for DEFENDANT. The PLAINTIFF  
20 and other CALIFORNIA CLASS Members did not set policies or establish procedures for  
21 DEFENDANT and operated within the policy guidelines that were provided to them by  
22 DEFENDANT. As a result, the PLAINTIFF and the other General Managers employed by  
23 DEFENDANT were engaged in work that falls on the production or the non-exempt  
24 administrative side of the administrative/production worker dichotomy and should have been  
25 properly classified as non-exempt employees.

26       22. The work schedule for the PLAINTIFF and other CALIFORNIA CLASS  
27 Members required them to work more than eight (8) hours in a workday and more than forty  
28 (40) hours in a workweek.

1           23. General Managers were classified as exempt from California overtime and  
 2 related laws by DEFENDANT, however, these employees did not have managerial duties or  
 3 authority and were therefore managers in name only. General Managers performed these  
 4 ongoing day-to-day office and clerical activities because they had a very minor role in  
 5 supervising employees and had no authority to make employment-related decisions relating  
 6 to DEFENDANT's employees without first consulting DEFENDANT's district managers  
 7 and DEFENDANT's human resources department. Furthermore, the General Managers did  
 8 not exercise discretion or independent judgment as to matters of significance, and their job  
 9 duties were not directly related to DEFENDANT's management policies or general business  
 10 operation. At DEFENDANT's optical retail stores, DEFENDANT also employed retail  
 11 associates and retail managers that DEFENDANT classified as non-exempt employees and  
 12 paid overtime compensation for their overtime hours worked. The General Managers  
 13 employed by DEFENDANT have only some additional minor responsibilities in comparison  
 14 to the retail associates and retail managers employed by DEFENDANT that were paid on an  
 15 hourly basis and eligible to earn overtime pay for their overtime hours worked. The minor  
 16 work responsibilities General Managers performed in addition to the work performed by  
 17 other non-exempt retail associates and retail managers who were eligible for overtime  
 18 compensation, was readjusting work shifts for DEFENDANT's employees, interviewing  
 19 potential employees and closing DEFENDANT's store. These minor additional  
 20 responsibilities were performed in strict accordance with DEFENDANT's company policies  
 21 and procedures. General Managers spent a very small amount of their working time  
 22 engaging in these tasks, but rather spent the vast majority of their time performing the non-  
 23 exempt and non-managerial finite set of tasks that focused on performing the same day-to-  
 24 day activities of DEFENDANT's non-exempt employees.

25           24. PLAINTIFF and all members of the CALIFORNIA CLASS are and were  
 26 uniformly classified and treated by DEFENDANT as exempt at the time of hire and  
 27 thereafter, DEFENDANT failed to take the proper steps to determine whether the  
 28 PLAINTIFF, and the members of the CALIFORNIA CLASS, were properly classified under

1 the applicable Industrial Welfare Commission Wage Order (Wage Order 4-2001) and Cal.  
 2 Lab. Code §§ 510, *et seq.* as exempt from applicable California labor laws. Since  
 3 DEFENDANT affirmatively and wilfully misclassified the PLAINTIFF and the members of  
 4 the CALIFORNIA CLASS in compliance with California labor laws, DEFENDANT's  
 5 practices violated and continue to violate California law. In addition, DEFENDANT acted  
 6 deceptively by falsely and fraudulently telling the PLAINTIFF and each member of the  
 7 CALIFORNIA CLASS that they were exempt from overtime pay when DEFENDANT  
 8 knew or should have known that this statement was false and not based on known facts.  
 9 DEFENDANT also acted unfairly by violating the California labor laws, and as a result of  
 10 this policy and practice, DEFENDANT also violated the UCL. In doing so, DEFENDANT  
 11 cheated the competition by paying the CALIFORNIA CLASS less than the amount  
 12 competitors paid who complied with the law and cheated the CALIFORNIA CLASS by not  
 13 paying them in accordance with California law.

14       25. DEFENDANT also failed to provide and still fails to provide the PLAINTIFF  
 15 and the other CALIFORNIA CLASS Members with a wage statement in writing that  
 16 accurately sets forth gross wages earned, all applicable hourly rates in effect during the pay  
 17 period and the corresponding number of hours worked at each hourly rate by the  
 18 PLAINTIFF and the other CALIFORNIA CLASS Members. This conduct violated  
 19 California Labor Code § 226. The pay stub also did not accurately display anywhere the  
 20 PLAINTIFF's and the other CALIFORNIA CLASS Members' overtime hours and  
 21 applicable rates of overtime pay for the pay period.

22       26. By reason of this uniform conduct applicable to the PLAINTIFF and all the  
 23 CALIFORNIA CLASS Members, DEFENDANT committed acts of unfair competition in  
 24 violation of the California Unfair Competition law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*  
 25 (the "UCL"), by engaging in a uniform company-wide policy and procedure which failed to  
 26 correctly classify the PLAINTIFF and the CALIFORNIA CLASS of General Managers as  
 27 non-exempt. The proper classification of these employees is DEFENDANT's burden. As a  
 28 result of DEFENDANT's intentional disregard of the obligation to meet this burden,

1 DEFENDANT failed to properly calculate and/or pay all required overtime compensation  
 2 for work performed by the members of the CALIFORNIA CLASS and violated the  
 3 applicable Wage Order, the California Labor Code and the regulations promulgated  
 4 thereunder as herein alleged.

5       27. Plaintiff Shukri Sakkab worked as a General Manager for DEFENDANT and  
 6 was classified as an exempt employee from April of 2010 to November of 2011.  
 7 PLAINTIFF performed the finite set of tasks of greeting customers, handling customer  
 8 requests and customer service complaints, conducting optical sales in accordance with  
 9 DEFENDANT's company policies, taking inventory, receiving customers' money in  
 10 payment for their receipt of products or services provided by DEFENDANT, and acting as  
 11 an information liaison between DEFENDANT's district managers and other employees in  
 12 his store. In addition, the PLAINTIFF also performed related clerical tasks, paperwork, and  
 13 reviewed daily, weekly, and monthly sales goals in accordance with DEFENDANT's  
 14 policies. During the CALIFORNIA CLASS PERIOD, PLAINTIFF was permitted no  
 15 discretion in his duties because DEFENDANT's district managers' directives controlled  
 16 virtually every aspect of the store's day-to-day operations, including but not limited to, the  
 17 days and hours of store operations; power to change store hours; store layouts and changes  
 18 to store layouts; selection, presentation, and pricing of merchandise, and payroll budgets  
 19 leaving PLAINTIFF no choice in how to manage the store. During the CALIFORNIA  
 20 CLASS PERIOD, PLAINTIFF as a General Manager, was classified by DEFENDANT as  
 21 exempt from overtime pay and worked in excess of eight (8) hours in a workday and more  
 22 than forty (40) hours in a workweek, but as a result of DEFENDANT's misclassification of  
 23 PLAINTIFF as exempt from the applicable California Labor Code provisions, PLAINTIFF  
 24 was not compensated by DEFENDANT for his overtime hours worked at the applicable  
 25 overtime rate and DEFENDANT also failed to provide PLAINTIFF with his meal and rest  
 26 breaks. In addition, PLAINTIFF was not provided with accurate and itemized wage  
 27 statements showing the gross wages earned, the net wages earned, all applicable hourly rates  
 28 in effect during the pay period, including overtime hourly rates, and the corresponding

1 number of hours worked at each hourly rate, by DEFENDANT during the CALIFORNIA  
2 CLASS PERIOD in violation of Cal. Lab. Code 226(a). To date, DEFENDANT has not  
3 fully paid PLAINTIFF the overtime compensation still owed to him or any penalty wages  
4 owed to him under Labor Code Section 203.

5 **THE CALIFORNIA CLASS**  
6

7 28. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
8 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the  
9 "UCL") as a Class Action, pursuant to California Code of Civil Procedure Section 382, on  
10 behalf of a California Class, defined as all persons who are or previously were employed by  
11 Defendant Luxottica Retail North America Inc. in California as a General Manager for a  
12 Lenscrafters retail store and were classified as exempt from overtime wages (the  
13 "CALIFORNIA CLASS") during the period beginning on the date four (4) years prior to the  
14 filing of this Complaint and ending on the date as determined by the Court (the  
15 "CALIFORNIA CLASS PERIOD").  
16

17 29. To the extent equitable tolling operates to toll claims by the CALIFORNIA  
18 CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD should be adjusted  
19 accordingly.  
20

21 30. DEFENDANT, as a matter of corporate policy, practice and procedure, and in  
22 violation of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage  
23 Order Requirements, and the applicable provisions of California law, intentionally,  
24 knowingly, and wilfully, engaged in a practice whereby DEFENDANT uniformly, unfairly,  
25 unlawfully, and deceptively instituted a practice to ensure that the employees employed in a  
26 General Manager position were not properly classified as non-exempt from the requirements  
27 of California Labor Code §§ 510, *et seq.*  
28

31. DEFENDANT has the burden of proof to make sure that each and every  
32 employee is properly classified as exempt from the requirements of the Cal. Lab. Code §§  
33 510, *et seq.* DEFENDANT, however, as a matter of uniform and systematic policy and  
34

1 procedure had in place during the CALIFORNIA CLASS PERIOD and still has in place a  
2 policy and practice that misclassifies the CALIFORNIA CLASS Members as exempt.  
3 DEFENDANT's uniform policy and practice in place at all times during the CALIFORNIA  
4 CLASS PERIOD and currently in place is to systematically classify each and every  
5 CALIFORNIA CLASS Member as exempt from the requirements of the California Labor  
6 Code §§ 510, *et seq.* This common business practice applicable to each and every  
7 CALIFORNIA CLASS Member can be adjudicated on a class-wide basis as unlawful,  
8 unfair, and/or deceptive under Cal. Business & Professions Code §§ 17200, *et seq.* (the  
9 "UCL") as causation, damages, and reliance are not elements of this claim.

10       32. At no time before, during or after the PLAINTIFF's employment with  
11 DEFENDANT was any General Manager reclassified as non-exempt from the applicable  
12 requirements of California Labor Code §§ 510, *et seq.* after each CALIFORNIA CLASS  
13 Member was initially, uniformly, and systematically classified as exempt upon being hired.

14       33. Any individual declarations of any employees offered at this time purporting  
15 to indicate that one or more General Managers may have been properly classified is of no  
16 force or affect absent contemporaneous evidence that DEFENDANT's uniform system did  
17 not misclassify the PLAINTIFF and the other CALIFORNIA CLASS Members as exempt  
18 pursuant to Cal. Lab. Code §§ 510, *et seq.* absent proof of such a contemporaneous system,  
19 DEFENDANT's business practice is uniformly unlawful, unfair and/or deceptive under the  
20 UCL and may be so adjudicated on a class-wide basis. As a result of the UCL violations,  
21 the PLAINTIFF and the CALIFORNIA CLASS Members are entitled to compel  
22 DEFENDANT to provide restitutionary disgorgement of their ill-gotten gains into a fluid  
23 fund in order to restore these funds to the PLAINTIFF and the CALIFORNIA CLASS  
24 Members according to proof.

25       34. The CALIFORNIA CLASS is so numerous that joinder of all CALIFORNIA  
26 CLASS Members is impracticable.

27       35. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS  
28 under California law by:

- (a) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully, unfairly and/or deceptively having in place company policies, practices and procedures that uniformly misclassified the PLAINTIFF and the members of the CALIFORNIA CLASS as exempt;
- (b) Committing an act of unfair competition in violation of the UCL, by unlawfully, unfairly, and/or deceptively failing to have in place a company policy, practice and procedure that accurately determined the amount of working time spent by the PLAINTIFF and the members of the CALIFORNIA CLASS performing non-exempt labor;
- (c) Committing an act of unfair competition in violation of the UCL, by having in place a company policy, practice and procedure that failed to reclassify as non-exempt those members of the CALIFORNIA CLASS whose actual tasks were comprised of non-exempt job functions;
- (d) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code §§ 510, *et seq.*, by failing to pay the correct overtime pay to the PLAINTIFF and the members of the CALIFORNIA CLASS who were improperly classified as exempt, and retaining the unpaid overtime to the benefit of DEFENDANT;
- (e) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code § 226.7, by failing to provide all mandatory meal and/or rest periods to the PLAINTIFF and the CALIFORNIA CLASS Members;
- (f) Committing an act of unfair competition in violation of the UCL, by violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF and the members of the CALIFORNIA CLASS with an accurate itemized statement in writing showing the gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period

1 and the corresponding number of hours worked at each hourly rate by  
2 the employee; and,

3 (g) Committing an act of unfair competition in violation of the UCL by  
4 violating Cal. Lab. Code § 203 by failing to provide restitution of  
5 wages owed to PLAINTIFF and members of the CALIFORNIA  
6 CLASS who were improperly classified as exempt and who have  
7 terminated their employment.

8 36. This Class Action meets the statutory prerequisites for the maintenance of a  
9 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

10 (a) The persons who comprise the CALIFORNIA CLASS are so numerous  
11 that the joinder of all such persons is impracticable and the disposition  
12 of their claims as a class will benefit the parties and the Court;  
13 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are  
14 raised in this Complaint are common to the CALIFORNIA CLASS will  
15 apply uniformly to every member of the CALIFORNIA CLASS;  
16 (c) The claims of the representative PLAINTIFF are typical of the claims  
17 of each member of the CALIFORNIA CLASS. PLAINTIFF, like all  
18 the other members of the CALIFORNIA CLASS, was initially  
19 classified as exempt upon hiring based on the defined corporate policies  
20 and practices and labored under DEFENDANT's systematic procedure  
21 that failed to properly classify as non-exempt the PLAINTIFF and the  
22 members of the CALIFORNIA CLASS. PLAINTIFF sustained  
23 economic injury as a result of DEFENDANT's employment practices.  
24 PLAINTIFF and the members of the CALIFORNIA CLASS were and  
25 are similarly or identically harmed by the same unlawful, deceptive,  
26 unfair and pervasive pattern of misconduct engaged in by  
27 DEFENDANT by deceptively advising all General Managers that they  
28 were exempt from overtime wages based on the defined corporate

1 policies and practices, and unfairly failing to pay overtime to these  
2 employees who were improperly classified as exempt; and,

3 (d) The representative PLAINTIFF will fairly and adequately represent and  
4 protect the interest of the CALIFORNIA CLASS, and has retained  
5 counsel who are competent and experienced in Class Action litigation.  
6 There are no material conflicts between the claims of the representative  
7 PLAINTIFF and the members of the CALIFORNIA CLASS that would  
8 make class certification inappropriate. Counsel for the CALIFORNIA  
9 CLASS will vigorously assert the claims of all employees in the  
10 CALIFORNIA CLASS.

11 37. In addition to meeting the statutory prerequisites to a Class Action, this Action  
12 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

13 (a) Without class certification and determination of declaratory, statutory  
14 and other legal questions within the class format, prosecution of  
15 separate actions by individual members of the CALIFORNIA CLASS  
16 will create the risk of:  
17 1) Inconsistent or varying adjudications with respect to individual  
18 members of the CALIFORNIA CLASS which would establish  
19 incompatible standards of conduct for the parties opposing the  
20 CALIFORNIA CLASS; and/or,  
21 2) Adjudication with respect to individual members of the  
22 CALIFORNIA CLASS which would as a practical matter be  
23 dispositive of interests of the other members not party to the  
24 adjudication or substantially impair or impede their ability to  
25 protect their interests.  
26 (b) The parties opposing the CALIFORNIA CLASS have acted or refused  
27 to act on grounds generally applicable to the CALIFORNIA CLASS,  
28 making appropriate class-wide relief with respect to the CALIFORNIA

1 CLASS as a whole in that DEFENDANT uniformly classified and  
2 treated the General Managers as exempt and, thereafter, uniformly  
3 failed to take proper steps to determine whether the General Managers  
4 were properly classified as exempt, and thereby denied these employees  
5 overtime wages as required by law;

6 1) With respect to the First Cause of Action, the final relief on  
7 behalf of the CALIFORNIA CLASS sought does not relate  
8 exclusively to restitution because through this claim the  
9 PLAINTIFF seeks declaratory relief holding that  
10 DEFENDANT's policy and practices constitute unfair  
11 competition, along with incidental equitable relief as may be  
12 necessary to remedy the conduct declared to constitute unfair  
13 competition;

14 (c) Common questions of law and fact exist as to the members of the  
15 CALIFORNIA CLASS, with respect to the practices and violations of  
16 California law as listed above, and predominate over any question  
17 affecting only individual CALIFORNIA CLASS Members, and a Class  
18 Action is superior to other available methods for the fair and efficient  
19 adjudication of the controversy, including consideration of:

20 1) The interests of the members of the CALIFORNIA CLASS in  
21 individually controlling the prosecution or defense of separate  
22 actions in that the substantial expense of individual actions will  
23 be avoided to recover the relatively small amount of economic  
24 losses sustained by the individual CALIFORNIA CLASS  
25 Members when compared to the substantial expense and burden  
26 of individual prosecution of this litigation;  
27 2) Class certification will obviate the need for unduly duplicative  
28 litigation that would create the risk of:

1                   A. Inconsistent or varying adjudications with respect to  
2                   individual members of the CALIFORNIA CLASS, which  
3                   would establish incompatible standards of conduct for  
4                   DEFENDANT; and/or,  
5                   B. Adjudications with respect to individual members of the  
6                   CALIFORNIA CLASS would as a practical matter be  
7                   dispositive of the interests of the other members not  
8                   parties to the adjudication or substantially impair or  
9                   impede their ability to protect their interests;  
10                  3) In the context of wage litigation because as a practical matter a  
11                  substantial number of individual CALIFORNIA CLASS  
12                  Members will avoid asserting their legal rights out of fear of  
13                  retaliation by DEFENDANT, which may adversely affect an  
14                  individual's job with DEFENDANT or with a subsequent  
15                  employer, the Class Action is the only means to assert their  
16                  claims through a representative; and,  
17                  4) A Class Action is superior to other available methods for the fair  
18                  and efficient adjudication of this litigation because class  
19                  treatment will obviate the need for unduly and unnecessary  
20                  duplicative litigation that is likely to result in the absence of  
21                  certification of this Action pursuant to Cal. Code of Civ. Proc. §  
22

23       38. This Court should permit this Action to be maintained as a Class Action  
24 pursuant to Cal. Code of Civ. Proc. § 382, because:

25 (a) The questions of law and fact common to the CALIFORNIA CLASS  
26 predominate over any question affecting only individual CALIFORNIA  
27 CLASS Members because DEFENDANT's employment practices were  
28 uniform and systematically applied with respect to the CALIFORNIA

1 CLASS;

2 (b) A Class Action is superior to any other available method for the fair  
3 and efficient adjudication of the claims of the members of the  
4 CALIFORNIA CLASS because in the context of employment litigation  
5 a substantial number of individual CALIFORNIA CLASS Members  
6 will avoid asserting their rights individually out of fear of retaliation or  
7 adverse impact on their employment;

8 (c) The members of the CALIFORNIA CLASS are so numerous that it is  
9 impractical to bring all members of the CALIFORNIA CLASS before  
10 the Court;

11 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will not  
12 be able to obtain effective and economic legal redress unless the action  
13 is maintained as a Class Action;

14 (e) There is a community of interest in obtaining appropriate legal and  
15 equitable relief for the acts of unfair competition, statutory violations  
16 and other improprieties, and in obtaining adequate compensation for the  
17 injuries which DEFENDANT's actions have inflicted upon the  
18 CALIFORNIA CLASS;

19 (f) There is a community of interest in ensuring that the combined assets of  
20 DEFENDANT are sufficient to adequately compensate the members of  
21 the CALIFORNIA CLASS for the injuries sustained;

22 (g) DEFENDANT has acted or refused to act on grounds generally  
23 applicable to the CALIFORNIA CLASS, thereby making final class-  
24 wide relief appropriate with respect to the CALIFORNIA CLASS as a  
25 whole;

26 (h) The members of the CALIFORNIA CLASS are readily ascertainable  
27 from the business records of DEFENDANT. The CALIFORNIA  
28 CLASS consists of all DEFENDANT's General Managers who were

classified as exempt and who were employed in California during the CALIFORNIA CLASS PERIOD; and,

(i) Class treatment provides manageable judicial treatment calculated to bring an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

7       39. DEFENDANT maintains records from which the Court can ascertain and  
8 identify by name and job title, each of DEFENDANT's employees who have been  
9 systematically, intentionally and uniformly subjected to DEFENDANT's corporate policy,  
10 practices and procedures as herein alleged. PLAINTIFF will seek leave to amend the  
11 Complaint to include any additional job titles of similarly situated employees when they  
12 have been identified.

## THE CALIFORNIA LABOR SUB-CLASS

40. PLAINTIFF further brings the Second, Third, and Fourth Causes of Action on  
behalf of a California sub-class, defined as all members of the CALIFORNIA CLASS who  
were employed by Defendant Luxottica Retail North America Inc. in California (the  
"CALIFORNIA LABOR SUB-CLASS") during the period beginning on the date three (3)  
years prior to the filing of the action and ending on the date as determined by the Court (the  
"CALIFORNIA LABOR SUB-CLASS PERIOD") pursuant to California Code of Civil  
Procedure § 382.

41. DEFENDANT, as a matter of corporate policy, practice and procedure,  
22 and in violation of the applicable California Labor Code ("Labor Code"), and Industrial  
23 Welfare Commission ("IWC") Wage Order Requirements intentionally, knowingly, wilfully,  
24 and systematically misclassified the PLAINTIFF and the other members of the  
25 CALIFORNIA CLASS and the CALIFORNIA LABOR SUB-CLASS as exempt from  
26 overtime wages and other labor laws based on DEFENDANT's comprehensive policies and  
27 procedures in order to avoid the payment of overtime wages by misclassifying their positions

1 as exempt from overtime wages and other labor laws. To the extent equitable tolling  
2 operates to toll claims by the CALIFORNIA LABOR SUB-CLASS against DEFENDANT,  
3 the CALIFORNIA LABOR SUB-CLASS PERIOD should be adjusted accordingly.

4 42. DEFENDANT maintains records from which the Court can ascertain and  
5 identify by job title each of DEFENDANT's employees who as CALIFORNIA LABOR  
6 SUB-CLASS Members have been systematically, intentionally and uniformly misclassified  
7 as exempt as a matter of DEFENDANT's corporate policy, practices and procedures.  
8 PLAINTIFF will seek leave to amend the Complaint to include these additional job titles  
9 when they have been identified.

10 43. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all  
11 CALIFORNIA LABOR SUB-CLASS Members is impracticable.

12 44. Common questions of law and fact exist as to members of the CALIFORNIA  
13 LABOR SUB-CLASS, including, but not limited, to the following:

- 14 (a) Whether DEFENDANT unlawfully failed to pay overtime  
15 compensation to members of the CALIFORNIA LABOR SUB-CLASS  
16 in violation of the California Labor Code and California regulations and  
17 the applicable California Wage Order;
- 18 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are  
19 non-exempt employees entitled to overtime compensation for overtime  
20 hours worked under the overtime pay requirements of California law;
- 21 (c) Whether DEFENDANT's policy and practice of classifying the  
22 CALIFORNIA LABOR SUB-CLASS Members as exempt from  
23 overtime compensation and failing to pay the CALIFORNIA LABOR  
24 SUB-CLASS Members overtime violate applicable provisions of  
25 California law;
- 26 (d) Whether DEFENDANT unlawfully failed to keep and furnish  
27 CALIFORNIA LABOR SUB-CLASS Members with accurate records  
28 of overtime hours worked;

- (e) Whether DEFENDANT's policy and practice of failing to pay members of the CALIFORNIA LABOR SUB-CLASS all wages when due within the time required by law after their employment ended violates California law; and,
- (f) The proper measure of damages and penalties owed to the members of the CALIFORNIA LABOR SUB-CLASS.

7       45. DEFENDANT, as a matter of corporate policy, practice and procedure,  
8 erroneously classified all General Managers as exempt from overtime wages and other labor  
9 laws. All General Managers, including the PLAINTIFF, performed the same finite set of  
10 tasks and were paid by DEFENDANT according to uniform and systematic company  
11 procedures, which, as alleged herein above, failed to correctly pay overtime compensation.  
12 This business practice was uniformly applied to each and every member of the  
13 CALIFORNIA LABOR SUB-CLASS, and therefore, the propriety of this conduct can be  
14 adjudicated on a class-wide basis.

15       46. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-  
16 CLASS under California law by:

17 (a) Violating Cal. Lab. Code §§ 510, *et seq.*, by misclassifying and thereby  
18 failing to pay the PLAINTIFF and the members of the CALIFORNIA  
19 LABOR SUB-CLASS the correct overtime pay for a workday longer  
20 than eight (8) hours, a workweek longer than forty (40) hours, and/or all  
21 hours worked on the seventh (7th) consecutive day of a workweek for  
22 which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;  
23 (b) Violating Cal. Lab. Code § 226, by failing to provide the PLAINTIFF  
24 and the members of the CALIFORNIA LABOR SUB-CLASS who  
25 were improperly classified as exempt with an accurate itemized  
26 statement in writing showing the gross wages earned, the net wages  
27 earned, all applicable hourly rates in effect during the pay period and  
28 the corresponding number of hours worked at each hourly rate by the

1 employee; and,

2 (c) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides that  
3 when an employee is discharged or quits from employment, the  
4 employer must pay the employee all wages due without abatement, by  
5 failing to tender full payment and/or restitution of wages owed or in the  
6 manner required by California law to the members of the  
7 CALIFORNIA LABOR SUB-CLASS who have terminated their  
8 employment.

9 47. This Class Action meets the statutory prerequisites for the maintenance of a  
10 Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

11 (a) The persons who comprise the CALIFORNIA LABOR SUB-CLASS  
12 are so numerous that the joinder of all such persons is impracticable and  
13 the disposition of their claims as a class will benefit the parties and the  
14 Court;

15 (b) Nearly all factual, legal, statutory, and declaratory relief issues that are  
16 raised in this Complaint are common to the CALIFORNIA LABOR  
17 SUB-CLASS and will apply uniformly to every member of the  
18 CALIFORNIA LABOR SUB-CLASS;

19 (c) The claims of the representative PLAINTIFF are typical of the claims  
20 of each member of the CALIFORNIA LABOR SUB-CLASS.  
21 PLAINTIFF, like all the other members of the CALIFORNIA LABOR  
22 SUB-CLASS, was improperly classified as exempt and denied overtime  
23 pay as a result of DEFENDANT's systematic classification practices.  
24 PLAINTIFF and all the other members of the CALIFORNIA LABOR  
25 SUB-CLASS sustained economic injuries arising from DEFENDANT's  
26 violations of the laws of California; and,

27 (d) The representative PLAINTIFF will fairly and adequately represent and  
28 protect the interest of the CALIFORNIA LABOR SUB-CLASS, and

1 has retained counsel who are competent and experienced in Class  
2 Action litigation. There are no material conflicts between the claims of  
3 the representative PLAINTIFF and the members of the CALIFORNIA  
4 LABOR SUB-CLASS that would make class certification  
5 inappropriate. Counsel for the CALIFORNIA LABOR SUB-CLASS  
6 will vigorously assert the claims of all CALIFORNIA LABOR SUB-  
7 CLASS Members.

8 48. In addition to meeting the statutory prerequisites to a Class Action, this Action  
9 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

10 (a) Without class certification and determination of declaratory, statutory  
11 and other legal questions within the class format, prosecution of  
12 separate actions by individual members of the CALIFORNIA LABOR  
13 SUB-CLASS will create the risk of:  
14 1) Inconsistent or varying adjudications with respect to individual  
15 members of the CALIFORNIA LABOR SUB-CLASS which  
16 would establish incompatible standards of conduct for the parties  
17 opposing the CALIFORNIA LABOR SUB-CLASS; or,  
18 2) Adjudication with respect to individual members of the  
19 CALIFORNIA LABOR SUB-CLASS which would as a  
20 practical matter be dispositive of interests of the other members  
21 not party to the adjudication or substantially impair or impede  
22 their ability to protect their interests.  
23 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS have  
24 acted or refused to act on grounds generally applicable to the  
25 CALIFORNIA LABOR SUB-CLASS, making appropriate class-wide  
26 relief with respect to the CALIFORNIA LABOR SUB-CLASS as a  
27 whole in that DEFENDANT uniformly classified and treated the  
28 General Managers as exempt and, thereafter, uniformly failed to take

1 proper steps to determine whether the General Managers were properly  
2 classified as exempt, and thereby denied these employees overtime  
3 wages as required by law;

4 (c) Common questions of law and fact predominate as to the members of  
5 the CALIFORNIA LABOR SUB-CLASS, with respect to the practices  
6 and violations of California law as listed above, and predominate over  
7 any question affecting only individual CALIFORNIA LABOR SUB-  
8 CLASS Members, and a Class Action is superior to other available  
9 methods for the fair and efficient adjudication of the controversy,  
10 including consideration of:

11 1) The interests of the members of the CALIFORNIA LABOR  
12 SUB-CLASS in individually controlling the prosecution or  
13 defense of separate actions in that the substantial expense of  
14 individual actions will be avoided to recover the relatively small  
15 amount of economic losses sustained by the individual  
16 CALIFORNIA LABOR SUB-CLASS Members when compared  
17 to the substantial expense and burden of individual prosecution  
18 of this litigation;

19 2) Class certification will obviate the need for unduly duplicative  
20 litigation that would create the risk of:  
21 A. Inconsistent or varying adjudications with respect to  
22 individual members of the CALIFORNIA LABOR SUB-  
23 CLASS, which would establish incompatible standards of  
24 conduct for DEFENDANT; and/or,  
25 B. Adjudications with respect to individual members of the  
26 CALIFORNIA LABOR SUB-CLASS would as a  
27 practical matter be dispositive of the interests of the other  
28 members not parties to the adjudication or substantially

impair or impede their ability to protect their interests:

- 3) In the context of wage litigation because a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual's job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A Class Action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this Action pursuant to Cal. Code of Civ. Proc. § 382.

15       49. This Court should permit this Action to be maintained as a Class Action  
16 pursuant to Cal. Code of Civ. Proc. § 382, because:

- (a) The questions of law and fact common to the CALIFORNIA LABOR SUB-CLASS predominate over any question affecting only individual CALIFORNIA LABOR SUB-CLASS Members;
- (b) A Class Action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the CALIFORNIA LABOR SUB-CLASS because in the context of employment litigation a substantial number of individual CALIFORNIA LABOR SUB-CLASS Members will avoid asserting their rights individually out of fear of retaliation or adverse impact on their employment;
- (c) The members of the CALIFORNIA LABOR SUB-CLASS are so numerous that it is impractical to bring all members of the

1 CALIFORNIA LABOR SUB-CLASS before the Court;

2 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS

3 Members, will not be able to obtain effective and economic legal

4 redress unless the action is maintained as a Class Action;

5 (e) There is a community of interest in obtaining appropriate legal and

6 equitable relief for the acts of unfair competition, statutory violations

7 and other improprieties, and in obtaining adequate compensation for the

8 damages and injuries which DEFENDANT's actions have inflicted

9 upon the CALIFORNIA LABOR SUB-CLASS;

10 (f) There is a community of interest in ensuring that the combined assets of

11 DEFENDANT are sufficient to adequately compensate the members of

12 the CALIFORNIA LABOR SUB-CLASS for the injuries sustained;

13 (g) DEFENDANT has acted or refused to act on grounds generally

14 applicable to the CALIFORNIA LABOR SUB-CLASS, thereby

15 making final class-wide relief appropriate with respect to the

16 CALIFORNIA LABOR SUB-CLASS as a whole;

17 (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily

18 ascertainable from the business records of DEFENDANT. The

19 CALIFORNIA LABOR SUB-CLASS consists of CALIFORNIA

20 CLASS Members who were employed by DEFENDANT in California

21 during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,

22 (i) Class treatment provides manageable judicial treatment calculated to

23 bring a efficient and rapid conclusion to all litigation of all wage and

24 hour related claims arising out of the conduct of DEFENDANT.

25

26 **JURISDICTION AND VENUE**

27 50. This Court has jurisdiction over this action pursuant to Cal. Code of Civ. Proc §

28 410.10 and Cal. Business & Professions Code § 17203. This action is brought as a Class Action

1 on behalf of similarly situated employees of Defendant Luxottica Retail North America Inc.  
2 pursuant to Cal. Code of Civ. Proc. § 382.

3       51.     Venue is proper in this Court pursuant to California Code of Civil Procedure,  
4 Sections 395 and 395.5, because PLAINTIFF resides in this County and DEFENDANT (i)  
5 currently maintains and at all relevant times maintained offices and facilities in this County  
6 and/or conducts substantial business in this County, and (ii) committed the wrongful conduct  
7 herein alleged in this County against members of the CALIFORNIA CLASS and  
8 CALIFORNIA LABOR SUB-CLASS.

**FIRST CAUSE OF ACTION**

#### **For Unlawful Business Practices**

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

14       52. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege  
15 and incorporate by this reference, as though fully set forth herein, paragraphs 1 through 51  
of this Complaint.

16           53. DEFENDANT is a "person" as that term is defined under Cal. Bus. and  
17 Prof. Code § 17021.

54. California Business & Professions Code §§ 17200, *et seq.* (the "UCL")  
defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.  
Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to  
unfair competition as follows:

Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

California Business & Professions Code § 17203.

55. By the conduct alleged herein, DEFENDANT has engaged and continues to

1 engage in a business practice which violates California law, including but not limited to,  
2 Wage Order 4-2001, the California Code of Regulations, and the California Labor Code  
3 Sections 201, 202, 203, 226(a), 226.7, 510, 1194 & 1198, and for which this Court should  
4 issue declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as  
5 may be necessary to prevent and remedy the conduct held to constitute unfair competition,  
6 including restitution of wages wrongfully withheld.

7       56. By the conduct alleged herein, DEFENDANT's practices were unlawful and  
8 unfair in that these practices violate public policy, are immoral, unethical, oppressive,  
9 unscrupulous or substantially injurious to employees, and are without valid justification or  
10 utility for which this Court should issue equitable and injunctive relief pursuant to Section  
11 17203 of the California Business & Professions Code, including restitution of wages  
12 wrongfully withheld.

13       57. Throughout the CALIFORNIA CLASS PERIOD, it was also DEFENDANT's  
14 uniform policy and practice to not provide all legally required meal and rest breaks to the  
15 PLAINTIFF and the CALIFORNIA CLASS Members. DEFENDANT's uniform practice  
16 required the PLAINTIFF and the CALIFORNIA CLASS Members to work continuously  
17 throughout the workday without being supplied all meal and/or rest breaks in accordance  
18 with the number of hours they worked. At all relevant times during the CALIFORNIA  
19 CLASS PERIOD, DEFENDANT failed to provide any compensated work time for failing to  
20 provide such breaks to the PLAINTIFF and the CALIFORNIA CLASS Members.

21       58. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of  
22 each member of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which  
23 a meal period was not timely provided for each five (5) hours of work, and/or one (1) hour  
24 of pay for each workday in which a second meal period was not timely provided for each ten  
25 (10) hours of work.

26       59. PLAINTIFF further demands on behalf of himself and on behalf of each  
27 member of the CALIFORNIA CLASS, one (1) hour of pay for each workday in which a rest  
28 period was not timely provided as required by law.

1       60. By the conduct alleged herein, DEFENDANT's practices were deceptive and  
2 fraudulent in that DEFENDANT's uniform policy and practice was to represent to  
3 PLAINTIFF and other CALIFORNIA CLASS Members that they were exempt from  
4 overtime pay when in fact these representations were false and likely to deceive, for which  
5 this Court should issue injunctive and equitable relief, pursuant to Cal. Bus. & Prof. Code §  
6 17203, including restitution of wages wrongfully withheld.

7       61. By the conduct alleged herein, DEFENDANT's practices were also unlawful,  
8 unfair and deceptive in that DEFENDANT's employment practices caused the PLAINTIFF  
9 and the other members of the CALIFORNIA CLASS to be underpaid during their  
10 employment with DEFENDANT.

11      62. By and through the unlawful and unfair business practices described herein,  
12 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF  
13 and the other members of the CALIFORNIA CLASS and has deprived them of valuable  
14 rights and benefits guaranteed by law and contract, all to the detriment of these employees  
15 and to the benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete  
16 against competitors who comply with the law.

17      63. All the acts described herein as violations of, among other things, the  
18 California Labor Code, California Code of Regulations, the Industrial Welfare Commission  
19 Wage Orders, are unlawful, are in violation of public policy, are immoral, unethical,  
20 oppressive, and unscrupulous, and are likely to deceive employees, as herein alleged, and  
21 thereby constitute deceptive, unfair and unlawful business practices in violation of Cal. Bus.  
22 and Prof. Code §§ 17200, *et seq.*

23      64. PLAINTIFF and the other members of the CALIFORNIA CLASS are entitled  
24 to, and do, seek such relief as may be necessary to restore to them the money and property  
25 which DEFENDANT has acquired, or of which the PLAINTIFF and the other members of  
26 the CALIFORNIA CLASS have been deprived, by means of the above described unlawful  
27 and unfair business practices, including earned but unpaid overtime wages for all overtime  
28 hours worked.

1       65. PLAINTIFF and the other members of the CALIFORNIA CLASS are further  
2 entitled to, and do, seek a declaration that the described business practices are unlawful,  
3 unfair and deceptive, and that injunctive relief should be issued restraining DEFENDANT  
4 from engaging in any unlawful and unfair business practices in the future.

5       66. PLAINTIFF and the other members of the CALIFORNIA CLASS have no  
6 plain, speedy and/or adequate remedy at law that will end the unlawful and unfair business  
7 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur  
8 unabated. As a result of the unlawful and unfair business practices described herein, the  
9 PLAINTIFF and the other members of the CALIFORNIA CLASS have suffered and will  
10 continue to suffer irreparable legal and economic harm unless DEFENDANT is restrained  
11 from continuing to engage in these unlawful and unfair business practices.

## **SECOND CAUSE OF ACTION**

#### **For Failure To Pay Overtime Compensation**

[Cal. Lab. Code §§ 510, 1194 and 1198]

16 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All  
17 Defendants)

18       67. PLAINTIFF, and the other members of the CALIFORNIA LABOR  
19 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,  
20 paragraphs 1 through 66 of this Complaint.

21 68. Cal. Lab. Code § 510 states in relevant part:

22 Eight hours of labor constitutes a day's work. Any work in excess of  
23 eight hours in one workday and any work in excess of 40 hours in any  
24 one workweek and the first eight hours worked on the seventh day of  
work in any one workweek shall be compensated at the rate of no less  
than one and one-half times the regular rate of pay for an employee.  
25 Any work in excess of 12 hours in one day shall be compensated at the  
rate of no less than twice the regular rate of pay for an employee. In  
addition, any work in excess of eight hours on any seventh day of a  
26 workweek shall be compensated at the rate of no less than twice the  
regular rate of pay of an employee.

28 69. Cal. Lab. Code § 551 states that, "Every person employed in any occupation  
of labor is entitled to one day's rest therefrom in seven."

1           70. Cal. Lab. Code § 552 states that, "No employer of labor shall cause his  
2 employees to work more than six days in seven."

3           71. Cal. Lab. Code § 515(d) provides: "For the purpose of computing the  
4 overtime rate of compensation required to be paid to a nonexempt full-time salaried  
5 employee, the employee's regular hourly rate shall be 1/40th of the employee's weekly  
6 salary."

7           72. Cal. Lab. Code § 1194 states:

8                 Notwithstanding any agreement to work for a lesser wage, any  
9 employee receiving less than the legal minimum wage or the legal  
10 overtime compensation applicable to the employee is entitled to recover  
11 in a civil action the unpaid balance of the full amount of this minimum  
wage or overtime compensation, including interest thereon, reasonable  
attorney's fees, and costs of suit.

12           73. Cal. Lab. Code § 1198 provides: "The maximum hours of work and the  
13 standard conditions of labor fixed by the commission shall be the maximum hours of work  
14 and the standard conditions of labor for employees. The employment of any employee for  
15 longer hours than those fixed by the order or under conditions of labor prohibited by the  
order is unlawful."

16           74. DEFENDANT has intentionally and uniformly designated certain employees  
17 as "exempt" employees, by their job title alone and without regard to DEFENDANT's  
18 realistic expectations and actual overall requirements of the job, including the PLAINTIFF  
19 and the other members of the CALIFORNIA LABOR SUB-CLASS who worked on the  
20 production and non-managerial side of DEFENDANT's business. This was done in an  
21 illegal attempt to avoid payment of overtime wages and other benefits in violation of the  
22 Cal. Lab. Code and Industrial Welfare Commission requirements.

23           75. For an employee to be exempt as a bona fide "executive," all the following  
24 criteria must be met and DEFENDANT has the burden of proving that:

25                 (a) The employee's primary duty must be management of the enterprise, or of a  
26 customarily recognized department or subdivision; and,  
27                 (b) The employee must customarily and regularly direct the work of at least two  
28 (2) or more other employees; and,

- (c) The employee must have the authority to hire and fire, or to command particularly serious attention to his or her recommendations on such actions affecting other employees; and,
- (d) The employee must customarily and regularly exercise discretion and independent judgment; and,
- (e) The employee must be primarily engaged in duties which meet the test of exemption.

8 No member of the CALIFORNIA LABOR SUB-CLASS was or is an executive because  
9 they all fail to meet the requirements of being an "executive" within the meaning of the  
10 applicable Wage Order.

11       76. For an employee to be exempt as a bona fide "administrator," all of the  
12 following criteria must be met and DEFENDANT has the burden of proving that:

- (a) The employee must perform office or non-manual work directly related to management policies or general business operation of the employer; and,
- (b) The employee must customarily and regularly exercise discretion and independent judgment; and,
- (c) The employee must regularly and directly assist a proprietor or an exempt administrator; or,
- (d) The employee must perform, under only general supervision, work requiring special training, experience, or knowledge; or,
- (e) The employee must execute special assignments and tasks under only general supervision; and,
- (f) The employee must be primarily engaged in duties which meet the test of exemption.

25 No member of the CALIFORNIA LABOR SUB-CLASS was or is an administrator because  
26 they all fail to meet the requirements for being an "administrator" under the applicable Wage  
27 Order.

28 77. The Industrial Welfare Commission, in Wage Order 4-2001, at section

1 (1)(A)(3)(h), and Labor Code § 515 also set forth the requirements which must be complied  
 2 with to place an employee in the "professional" exempt category. For an employee to be  
 3 exempt as a bona fide "professional," all the following criteria must be met and  
 4 DEFENDANT has the burden of proving that:

- 5       (a) The employee is primarily engaged in an occupation commonly recognized as  
        6       a learned or artistic profession. For the purposes of this subsection, "learned  
        7       or artistic profession" means an employee who is primarily engaged in the  
        8       performance of:
  - 9           1) Work requiring knowledge of an advanced type in a field or science or  
          10          learning customarily acquired by a prolonged course of specialized  
          11          intellectual instruction and study, as distinguished from a general  
          12          academic education and from an apprenticeship, and from training in  
          13          the performance of routine mental, manual, or physical processes, or  
          14          work that is an essential part or necessarily incident to any of the above  
          15          work; or,
  - 16           2) Work that is original and creative in character in a recognized field of  
          17          artistic endeavor, and the result of which depends primarily on the  
          18          invention, imagination or talent of the employee or work that is an  
          19          essential part of or incident to any of the above work; and,
  - 20           3) Whose work is predominately intellectual and varied in character (as  
          21          opposed to routine mental, manual, mechanical, or physical work) and  
          22          is of such character cannot be standardized in relation to a given period  
          23          of time.
- 24       (b) The employee must customarily and regularly exercise discretion and  
        25       independent judgment; and,
- 26       (c) The employee earns a monthly salary equivalent to no less than two (2) times  
        27       the state minimum wage for full-time employment.

28 No member of the CALIFORNIA LABOR SUB-CLASS was or is a professional because

1 they all fail to meet the requirements of being a "professional" within the meaning of the  
2 applicable Wage Order.

3       78. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
4 CLASS, do not fit the definition of an exempt executive, administrative, or professional  
5 employee because:

6             (a) They did not work as executives or administrators; and,  
7             (b) The professional exemption does not apply to the PLAINTIFF, nor to the other  
8                 members of the CALIFORNIA LABOR SUB-CLASS because they did not  
9                 meet all the applicable requirements to work under the professional exemption  
10                 for the reasons set forth above in this Complaint.

11       79. During the CALIFORNIA LABOR SUB-CLASS PERIOD, the PLAINTIFF,  
12 and the other members of the CALIFORNIA LABOR SUB-CLASS, worked more than  
13 eight (8) hours in a workday, forty (40) hours in a workweek, and/or worked on the seventh  
14 (7th) consecutive day of a workweek.

15       80. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and the  
16 other members of the CALIFORNIA LABOR SUB-CLASS, overtime compensation for the  
17 hours they have worked in excess of the maximum hours permissible by law as required by  
18 Cal. Lab. Code §§ 510 and 1198, even though the PLAINTIFF, and the other members of  
19 the CALIFORNIA LABOR SUB-CLASS, were regularly required to work, and did in fact  
20 work, overtime hours.

21       81. By virtue of DEFENDANT's unlawful failure to pay additional compensation  
22 to the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, for  
23 their overtime hours, the PLAINTIFF, and the other members of the CALIFORNIA LABOR  
24 SUB-CLASS, have suffered, and will continue to suffer, an economic injury in amounts  
25 which are presently unknown to them and which will be ascertained according to proof at  
26 trial.

27       82. DEFENDANT knew or should have known that the PLAINTIFF, and the  
28 other members of the CALIFORNIA LABOR SUB-CLASS, were misclassified as exempt

1 and DEFENDANT systematically elected, either through intentional malfeasance or gross  
2 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate  
3 policy, practice and procedure.

4       83. Therefore, the PLAINTIFF, and the other members of the CALIFORNIA  
5 LABOR SUB-CLASS, request recovery of overtime compensation according to proof,  
6 interest, costs, as well as the assessment of any statutory penalties against DEFENDANT, in  
7 a sum as provided by the Cal. Lab. Code and/or other statutes. To the extent overtime  
8 compensation is determined to be owed to members of the CALIFORNIA LABOR SUB-  
9 CLASS who have terminated their employment, these employees would also be entitled to  
10 waiting time penalties under Labor Code § 203, which penalties are sought herein. Further,  
11 the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, are  
12 entitled to seek and recover statutory costs.

13        84. In performing the acts and practices herein alleged in violation of labor laws  
14 and refusing to provide the requisite overtime compensation, DEFENDANT acted and  
15 continues to act intentionally, oppressively, and maliciously toward the PLAINTIFF, and  
16 toward the other members of the CALIFORNIA LABOR SUB-CLASS, with a conscious  
17 and utter disregard of their legal rights, or the consequences to them, and with the despicable  
18 intent of depriving them of their property and legal rights and otherwise causing them injury  
19 in order to increase corporate profits at the expense of the PLAINTIFF and the members of  
20 the CALIFORNIA LABOR SUB-CLASS.

### **THIRD CAUSE OF ACTION**

### **For Failure to Provide Accurate Itemized Statements**

[Cal. Lab. Code § 226]

25 (By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All  
26 Defendants)

27       85. PLAINTIFF, and the other members of the CALIFORNIA LABOR  
28 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth herein,

1 paragraphs 1 through 84 of this Complaint.

2       86. Cal. Labor Code § 226 provides that an employer must furnish employees  
3 with an "accurate itemized" statement in writing showing:

- 4             (1) gross wages earned,
- 5             (2) total hours worked by the employee, except for any employee whose  
6 compensation is solely based on a salary and who is exempt from payment of  
7 overtime under subdivision (a) of Section 515 or any applicable order of the  
8 Industrial Welfare Commission,
- 9             (3) the number of piece-rate units earned and any applicable piece rate if the employee  
10 is paid on a piece-rate basis,
- 11             (4) all deductions, provided that all deductions made on written orders of the  
12 employee may be aggregated and shown as one item,
- 13             (5) net wages earned,
- 14             (6) the inclusive dates of the period for which the employee is paid,
- 15             (7) the name of the employee and his or her social security number, except that by  
16 January 1, 2008, only the last four digits of his or her social security number or an  
17 employee identification number other than a social security number may be shown on  
18 the itemized statement,
- 19             (8) the name and address of the legal entity that is the employer, and
- 20             (9) all applicable hourly rates in effect during the pay period and the corresponding  
21 number of hours worked at each hourly rate by the employee.

22       87. At all times relevant herein, DEFENDANT violated Labor Code § 226,  
23 in that DEFENDANT failed to provide an accurate wage statement in writing that properly  
24 and accurately itemized the number of hours worked by the PLAINTIFF, and the other  
25 members of the CALIFORNIA LABOR SUB-CLASS at the effective regular rates of pay  
26 and the effective overtime rates of pay.

27       88. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
28 § 226, causing damages to the PLAINTIFF, and the other members of the CALIFORNIA  
LABOR SUB-CLASS. These damages include, but are not limited to, costs expended

1 calculating the true hours worked and the amount of employment taxes which were not  
2 properly paid to state and federal tax authorities. These damages are difficult to estimate.  
3 Therefore, the PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
4 CLASS may elect to recover liquidated damages of \$50.00 for the initial pay period in which  
5 the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to  
6 Labor Code § 226, in an amount according to proof at the time of trial (but in no event more  
7 than \$4,000.00 for the PLAINTIFF and each respective member of the CALIFORNIA  
8 LABOR SUB-CLASS herein).

9

10

#### **FOURTH CAUSE OF ACTION**

11

##### **For Failure to Pay Wages When Due**

12

**[ Cal. Lab. Code § 203]**

13

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All  
Defendants)**

14

89. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-  
CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1  
through 88 of this Complaint.

15

90. Cal. Lab. Code § 200 provides that:

16

As used in this article:

17

(a) "Wages" includes all amounts for labor performed by  
employees of every description, whether the amount is fixed or  
ascertained by the standard of time, task, piece, Commission basis,  
or other method of calculation.

18

(b) "Labor" includes labor, work, or service whether rendered or  
performed under contract, subcontract, partnership, station plan, or  
other agreement if the labor to be paid for is performed personally  
by the person demanding payment.

19

91. Cal. Lab. Code § 201 provides, in relevant part, that "If an employer  
discharges an employee, the wages earned and unpaid at the time of discharge are due and  
payable immediately."

20

92. Cal. Lab. Code § 202 provides, in relevant part, that:

21

If an employee not having a written contract for a definite period  
quits his or her employment, his or her wages shall become due and

1 payable not later than 72 hours thereafter, unless the employee has  
2 given 72 hours previous notice of his or her intention to quit, in  
3 which case the employee is entitled to his or her wages at the time  
4 of quitting. Notwithstanding any other provision of law, an  
5 employee who quits without providing a 72-hour notice shall be  
6 entitled to receive payment by mail if he or she so requests and  
7 designates a mailing address. The date of the mailing shall  
8 constitute the date of payment for purposes of the requirement to  
9 provide payment within 72 hours of the notice of quitting.

10 93. There was no definite term in any CALIFORNIA LABOR SUB-CLASS  
11 Members' employment contract.

12 94. Cal. Lab. Code § 203 provides:

13 If an employer willfully fails to pay, without abatement or  
14 reduction, in accordance with Sections 201, 201.5, 202, and 205.5,  
15 any wages of an employee who is discharged or who quits, the  
16 wages of the employee shall continue as a penalty from the due  
17 date thereof at the same rate until paid or until an action therefor is  
18 commenced; but the wages shall not continue for more than 30  
19 days.

20 95. The employment of many CALIFORNIA LABOR SUB-CLASS Members  
21 terminated and DEFENDANT has not tendered payment of all wages owed as required by  
22 law.

23 96. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the  
24 members of the CALIFORNIA LABOR SUB-CLASS whose employment has terminated,  
25 PLAINTIFF demands thirty days of pay as penalty for not paying all wages due at time of  
termination for all employees who terminated employment during the CALIFORNIA  
LABOR SUB-CLASS PERIOD and demands an accounting and payment of all wages due,  
plus interest and statutory costs as allowed by law.

#### PRAYER FOR RELIEF

26 WHEREFORE, the PLAINTIFF prays for judgment against each Defendant, jointly  
27 and severally, as follows:

28 1. On behalf of the CALIFORNIA CLASS:

29 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
30 CLASS as a Class Action pursuant to California Code of Civil Procedure §

382.

2 B) An order requiring DEFENDANT to correctly calculate and pay all wages and  
3 all sums unlawfully withheld from compensation due to the PLAINTIFF and  
4 the other members of the CALIFORNIA CLASS;  
5 C) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid  
6 fund for restitution of the sums incidental to DEFENDANT's violations due to  
7 the PLAINTIFF and to the other members of the CALIFORNIA CLASS  
8 according to proof; and,  
9 D) An order temporarily, preliminarily, and permanently enjoining and restraining  
10 DEFENDANT from engaging in similar unlawful conduct as set forth herein.  
11 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:  
12 A) That the Court certify the Second, Third, and Fourth Causes of Action asserted  
13 by the CALIFORNIA LABOR SUB-CLASS as a Class Action pursuant to  
14 California Code of Civil Procedure § 382;  
15 B) Compensatory damages, according to proof at trial, including compensatory  
16 damages for overtime compensation due to the PLAINTIFF and the other  
17 members of the CALIFORNIA LABOR SUB-CLASS, during the applicable  
18 CALIFORNIA LABOR SUB-CLASS PERIOD plus interest thereon at the  
19 statutory rate;  
20 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay  
21 period in which a violation occurs and one hundred dollars (\$100) per each  
22 member of the CALIFORNIA LABOR SUB-CLASS for each violation in a  
23 subsequent pay period, not exceeding an aggregate penalty of four thousand  
24 dollars (\$4,000), and an award of costs for violation of Cal. Lab. Code § 226;  
25 and,  
26 D) The wages of all terminated employees from the CALIFORNIA LABOR  
27 SUB-CLASS as a penalty from the due date thereof at the same rate until paid  
28 or until an action therefore is commenced, in accordance with Cal. Lab. Code

§ 203.

**2 || 3. On all claims:**

- A) An award of interest, including prejudgment interest at the legal rate;
- B) Such other and further relief as the Court deems just and equitable; and,
- C) An award of penalties and cost of suit, but neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees under Cal. Lab. Code § 218.5.

10 Dated: January 11, 2012

BLUMENTHAL, NORDREHAUG & BHOWMIK

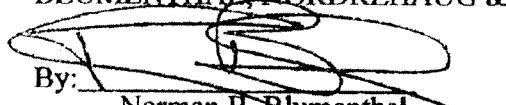
By: Norman B. Blumenthal  
Attorneys for Plaintiff

1  
**DEMAND FOR A JURY TRIAL**  
2

3 PLAINTIFF demands a jury trial on issues triable to a jury.  
4

5 Dated: January 11, 2012  
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BLUMENTHAL, NORDREHAUG & BHOWMIK

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